

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
NORTHERN DIVISION  
2:17-CV-15-BR

MERZ NORTH AMERICA, INC.,

Plaintiff,

v.

VIVEVE MEDICAL INC., VIVEVE, INC.,  
SEAN SHAPIRO, and TRACY ANDORA,

Defendants.

**ORDER**

This case comes before the court on the renewed emergency motion filed by plaintiff Merz North America, Inc. (“plaintiff”) (D.E. 31) for an order allowing it to take expedited discovery prior to conducting a conference pursuant to Rule 26(f) of the Federal Rules of Civil Procedure. The court previously allowed in part and denied in part plaintiff’s first motion (D.E. 9) seeking similar relief. 5 May 2017 Ord. (D.E. 24). Defendants Viveve Medical Inc., Viveve, Inc., Sean Shapiro, and Tracy Andora (collectively “defendants”) oppose the renewed motion. *See* Defs.’ Opp. (D.E. 38).

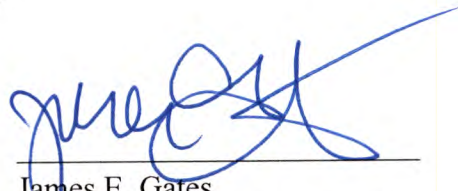
Consideration of the four factors bearing on requests for expedited discovery—procedural posture, scope of the discovery requests, irreparability of harm, and risk of loss of evidence—establish that the renewed motion should be denied. *See generally* 5 May 2017 Ord. 3 (citing, *e.g.*, *Chryso, Inc. v. Innovative Concrete Sols. of the Carolinas, LLC*, No. 5:15-CV-115-BR, 2015 WL 12600175, at \*3 (E.D.N.C. 30 June 2015); *Dimension Data N. Am., Inc. v. NetStar-1*, 226 F.R.D. 528, 531 (E.D.N.C. 2005)).

With respect to procedural posture, there continues not to be any hearing set for plaintiff’s motion for a temporary restraining order. *See id.* at 4. Perhaps more significantly,

since the time plaintiff filed its renewed motion, an Order for Discovery Plan (D.E. 34) was issued by the Clerk directing the parties to conduct a Rule 26(f) conference by 22 June 2017, just ten days from today. The conduct of that conference will, of course, allow the parties to engage in discovery in the regular course of litigation. *See* Fed. R. Civ. P. 26(d)(3).

As to the remaining factors, there is some overbreadth to plaintiff's proposed discovery requests for purposes of expedited discovery, and plaintiff has not demonstrated irreparable harm or any risk of loss of evidence if the expedited discovery is not permitted. Plaintiff's renewed emergency motion is accordingly DENIED.

SO ORDERED, this 12th day of June 2017.



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James E. Gates  
United States Magistrate Judge